

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 757

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

VS.

MICHIGAN PORTLAND CEMENT COMPANY

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF MICHIGAN

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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

IN TWO VOLUMES

LONDON

1704

Printed by J. Streater, at the Sign of the Gun, in St. Dunstons Church-yard.

Indictment

Summary of charges

Count one

Accepting concession in respect to the transportation of coal in car "L. & N. 28108" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 4, 1922, consigned in name of Municipal Light and Power Company, and diverted to Michigan Portland Cement Company.

Count two

Accepting concession in respect to the transportation of coal in car "C. & A. 22987" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count three

Accepting concession in respect to the transportation of coal in car "L. & N. 62517" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count four

Accepting concession in respect to the transportation of coal in car "L. & N. 64846" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, consigned in name of Municipal Light and Power Company, and diverted to Michigan Portland Cement Company.

Count five

Accepting concession in respect to the transportation of coal in car "L. & N. 32650" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count six

Accepting concession in respect to the transportation of coal in car "L. & N. 85046" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count seven

Accepting concession in respect to the transportation of coal in car "L. & N. 86949" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, consigned in name of Municipal Light and Power Company, and diverted to Michigan Portland Cement Company.

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Count eight

Accepting concession in respect to the transportation of coal in car "P. L. 870203" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count nine

Accepting concession in respect to the transportation of coal in car "L. & N. 81624" from Coburn mine, at Coburn, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Portland Cement Company.

Count ten

Accepting concession respect to the transportation of coal in car "L. & N. 80720" from Merna mine, at Merna, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 4, 1922, consigned in name of Municipal Light and Power Company, and diverted to Michigan Portland Cement Company.

Count eleven

Accepting concession in respect to the transportation of coal in car "L. & N. 83465" from Merna mine, at Merna, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, and diverted to Michigan Central Cement Company.

Count twelve

Accepting concession in respect to the transportation of coal in car "L. & N. 82307" from Merna mine, at Merna, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., August 31, 1922, and diverted to Michigan Portland Cement Company.

Count thirteen

Accepting concession in respect to the transportation of coal in car "L. & N. 83039" from Merna mine, at Merna, Ky., by L. & N., C. C. C. & St. L., C. N., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 2, 1922, consigned in name of Municipal Light and Power Company, and diverted to Michigan Portland Cement Company.

Count fourteen

Accepting concession in respect to the transportation of coal in car "L. & N. 70674" from Storm King mine, at Storm King, Ky., by L. & N., C. C. C. & St. L., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 5, 1922, and diverted to Michigan Portland Cement Company.

Count fifteen

Accepting concession in respect to the transportation of coal in car "L. & N. 77395" from Storm King mine, at Storm King, Ky., by L. & N., C. C. C. & St. L., M. C. R. R. railroads, arriving at Four Mile Lake, Mich., September 5, 1922, and diverted to Michigan Portland Cement Company.

- 3 Violation of act of Congress, approved February 19, 1903, as amended, (Elkins Act, 32 Stat. at L. 847, 34 Stat. at L. 584)

In United States District Court for the Eastern District of Michigan,
Southern Division

Indictment filed December 4, 1923

First count

Eastern District of Michigan, Southern Division, ss:

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Southern Division of the Eastern District of Michigan at the November term of said court in the year 1923, and inquiring for said division and district, upon their oath present.

1. That the Interstate Commerce Commission of the United States, on July 25, 1922, was of opinion that an emergency requiring immediate action then existed upon the lines of each and all common carriers by railroad subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto in that section of the United States lying east of the Mississippi River, and thereupon, under the authority of said act to regulate commerce and of said acts amendatory thereof and supplementary thereto, by

its service order No. 23 of that date and on that day duly promulgated, suspended, in that section, from and after July 26, 1922, until the further order of said Interstate Commerce Commission, all of the rules, regulations, and practices with respect to car service of such common carriers which conflicted with the directions in that order made; that, in and by said service order No. 23, it was provided that each of such common carriers, to the extent that it was currently unable promptly to transport all freight traffic offered to it for movement, or to be moved over its line or lines of railway, should give preference and priority to the movement of certain commodities, among which was coal, and that in supplying cars to mines upon the lines of any such carrier as was a coal-loading carrier, that is to say, a carrier serving coal mines located upon its own lines, such carrier should place at, furnish with, and assign to such coal mines cars suitable for the loading and transportation of coal in succession as might be required for certain classes of purposes, and, in the order of classes indicated by their numbers, class 1 being for such purposes as might from time to time be specifically designated by said Interstate Commerce Commission or its agents, to wit, first, in order of priority, coal required for class 1 purposes; second, in order of priority, coal required for class 2 purposes, which included, among other things, coal required for the current fuel use of railroads and other common carriers, and for the current use of public utilities which directly served the general public, under a franchise therefor, with street and interurban railways, electric power and light, gas, water and sewer works; then coal required for purposes in certain classes inferior in order of priority, to the purposes in said class 2, more particularly, class 5, which throughout the period from July 26, 1922, to August 29, 1922, inclusive, among other things, included coal required for the purpose of manufacturing Portland cement, and class 3, which throughout the period from August 30, 1922, to September 20, 1922, inclusive, included coal required for the purpose of manufacturing Portland cement; that coal consigned for a purpose in class 2 should not be reconsigned or diverted except for some other purpose in class 2, or for a purpose in class 1; that during the period of time extending from July 26, 1922, to September 20, 1922, said service order No. 23 remained in full force and effect; and that there was in fact during all the said period of time from August 7, 1922, to said September 20, 1922, both inclusive, such a shortage of equipment, particularly of serviceable locomotives and cars suitable for the transportation of coal, and such a congestion of traffic, upon the lines of a certain coal-loading railroad common carrier in said section of the United States, to wit, the Louisville and Nashville Railroad Company, resulting from strikes and non-action of employees of said common carrier, whose duty it was to keep such equipment in repair and in a serviceable condition, as that said common carrier was currently unable promptly to trans-

port all freight traffic offered to it for movement, or to be moved over its lines of railway, and, although said carrier then was able to place, furnish, and assign to coal mines upon its lines cars suitable for the loading and transportation of a portion of the coal required for class 1 and class 2 purposes, as defined in said order, to wit, fifty per cent, thereof, because of said shortage of equipment and said congestion of traffic it then was unable to place, furnish, and assign to coal mines upon its lines any suitable cars whatever for the loading and transportation of coal, required for purposes in class 3, class 4, or class 5, as defined in said order.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that throughout said period of time from August 7, 1922, to September 20, 1922, both inclusive, the Michigan Portland Cement Company, a corporation under the laws of the State of Michigan, was engaged in the manufacture, in said division of said district, of Portland cement, and customarily accepted delivery of carload shipments consigned to it when they were rendered for delivery to it by a certain common carrier by railroad in said section of the United States, to wit, The Michigan Central Railroad Company, at and upon certain railway tracks, herein called the private siding, owned by said Michigan Portland Cement Company, which connected with the railway line of said The Michigan Central Railroad Company, both said private siding and connection being at a certain point, to wit, "Four Mile Lake," in the County of Washtenaw, in said division and district.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during said last-mentioned period of time, to wit, on August 11, 1922, the Wilson-Berger Coal Company, Inc., requested said Louisville and Nashville Railroad Company to place, furnish and assign 29 cars, suitable for the loading and transportation of coal, to a certain mine in the State of Kentucky, which was served by, and was located upon the line of, said Louisville and Nashville Railroad Company, to wit, "Coburn mine," at Coburn, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that on said August 11, 1922, pursuant to said order given by the Wilson-Berger Coal Company, Inc., said Louisville and Nashville Railroad Company placed at, furnished with, and assigned to said mine a number of railroad cars suitable for the loading and transportation of coal, including the nine cars bearing the initials and numbers as stated below in this paragraph; that on August 11, 1922, at said Coburn Mine, said The Wilson-Berger Coal Company, Inc., loaded a carload of bituminous coal into and upon each of said nine cars, the initials and number of

said nine cars, and the kinds and weights of the coal so loaded therein being as follows, to wit:

Car initials	Car numbers	Kind of coal	Weight of lading in pounds
L. & N.-----	28108	Lump-----	81, 600
C. & A.-----	22987	Run-of-mine-----	87, 400
L. & N.-----	62517	Lump-----	78, 800
L. & N.-----	64846	Lump-----	81, 400
L. & N.-----	32650	Lump-----	100, 700
L. & N.-----	85046	Run-of-mine-----	106, 500
L. & N.-----	86949	Run-of-mine-----	106, 500
P. L.-----	870203	Run-of-mine-----	90, 300
L. & N.-----	81624	Run-of-mine-----	101, 700

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, under the circumstances and conditions hereinabove set forth and described, during said last-mentioned

8 period of time, to wit, on September 4, 1922, said Michigan Portland Cement Company, then and before then well knowing the premises aforesaid, at said Four Mile Lake, in said southern division of said eastern district of Michigan, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of certain of said property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to said act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of the aforesaid service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "28108," from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then

9 intending by a device to procure class 2 preference and priority in the placement and assignment of cars suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count here-

after mentioned in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car numbered "28108" to the Municipal Light and Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, numbered "28108," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Com-

10 Coburn mine, to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 4, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "28108," to said Michigan Portland Cement Company on said private siding at said Four Mile Lake; instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there knowingly accepted; and which said last-mentioned carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

11 6. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Com-

pany, at the time and place, in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

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Second count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2, and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

13 On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "22987," from The Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922,

then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company, and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "22987" to the Municipal Light and

14 Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company, and was transported in said car, bearing the number "22987," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said the Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "22987," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said
15 Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and

had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath, aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

16

Third count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during said last-mentioned period of time, to wit, on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2, and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23, from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

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On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "62517," from

the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company, and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "62517" to the Municipal Light and Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "62517," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Cuyahoga mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "62517," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, so said Michigan Portland Cement Company then well knew, said com-

competitor of Union did not need or require said kind of coal and that not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it voluntarily.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Company, at the time and place in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given by those carriers to said Michigan Portland Cement Company, which, by force of said service order No. 25, was not then an said Michigan Portland Cement Company then and there well knowing, due or owing to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

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Fourth count

11. And the grand jurors aforesaid, upon their oath aforesaid, do further present that on September 22, 1902, at Port Milwaukee aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing, the promises set forth in paragraphs 11, 12, and 13 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated; unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit: from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company, and a discrimination was practiced in its favor and against all other shippers in the class destined of shipping coal embraced in classes 2 and 3, of said service order No. 25 from mine located upon the line of and served by said Louisville and Nashville Railroad Company, that is to say:

21. On August 22, 1902, said Michigan Portland Cement Company, with the assistance of the Hewley-Hart Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number 64846, from the

Central Fuel Company, a duly organized corporation having an office in Cincinnati, in the State of Ohio, and, on August 26, 1882, then intending to use the same to procure the same, and to use the same in the placement and assignment of same, suitable, as aforesaid, for the building and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky, into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Dowsley-Hart Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad (Deliver)," pursuant to which instructions said Dowsley-Hart Coal Company, said The Central Fuel Company, and said The Wilson-Horner Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "4880" to the Municipal Light and Power Company, at Four Mile Lake, Michigan Central Railroad (Deliver), and thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "4880," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Commonwealth to said Four Mile Lake, over the respective connecting railway routes of said carriers, and on September 1, 1882, pursuant to said instructions and billing, and in further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "4880," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the municipal light and power plant owned and operated by the municipality of the town, near said Four Mile Lake, where said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and where said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Dowsley-Hart Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said

Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

24

Fifth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2 and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company, and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

25 On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "32650," from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference, and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "32650" to the Municipal Light and
26 Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "32650," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "32650," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

28

Sixth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during said last-mentioned period of time, to wit, on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2 and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said

Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23, from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "85046," from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "85046" to the Municipal Light and Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "85046," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "85046," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal

said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel

Company, of its acceptance of delivery of said carload of coal,
31 and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

32

Seventh count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2 and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St.

Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

33 On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "86949," from the Central Fuel Company, a duly organized corporation having an office in Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company, and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "86949" to the Municipal Light and

34 Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "86949," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "86949," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to

the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by
35 said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

36

Eighth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present that during said last-mentioned period of time, to wit, on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2, and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain other property in interstate commerce by certain common carriers by railroad in said section of the United States

lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its classes desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "870203," from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned from Kentucky into said Southern Division of said Eastern District of Michigan in interstate commerce for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company, and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "870203" to the Municipal Light and Power Company, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car bearing the number "870203" by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon

said private siding, said carload of coal was delivered in said car numbered "870203" to said Michigan Portland Cement Company, on said private siding at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake, which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted, and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company of its acceptance of delivery of said carload of coal, and
39 of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given by those carriers to said Michigan Portland Cement Company which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

40

Ninth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present that on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in paragraphs 1, 2, and 3 of the first count of this indictment, all of the allegations made in said paragraphs being hereby incorporated in this count by reference as fully as if they were here repeated, unlawfully did knowingly accept and receive a certain other concession in respect to the transportation of certain

other property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

41 On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said car bearing the number "81624," from the Central Fuel Company, a duly organized corporation having an office in Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count hereafter mentioned, from Kentucky into said Southern Division of said Eastern District of Michigan, in interstate commerce, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," pursuant to which instructions said Bewley-Darst Coal Company, said The Central Fuel Company and said The Wilson-Berger Coal Company, Inc., instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car bearing the number "81624," to the Municipal Light and Power Com-

42 pany, at Four Mile Lake, Michigan Central Railroad delivery, which thereupon, by reason of said instructions, was so billed by said Louisville and Nashville Railroad Company and was transported in said car, bearing the number "81624," by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Coburn mine to said Four Mile Lake, over the respective connecting railway routes of said carriers; and, on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan

Portland Cement Company upon said private siding, said carload of coal was delivered in said car, numbered "81624," to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said
43 Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

3. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which by force of said service order No. 23 was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

44

Tenth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, during the period of time in which said service order No. 23 was in force and effect, as alleged in the first count of this indictment, all of the allegations made in paragraphs 1 and 2 of said first count being hereby incorporated in this count by reference as fully as if they were here repeated, and during said period of time from August 7, 1922, to September 20, 1922, both inclusive, to wit, on August 11, 1922, the Mary Helen Coal Corporation requested said Louisville and Nashville Railroad Company to place,

furnish, and assign 34 cars suitable for the loading and transportation of coal to a certain mine in the State of Kentucky, which was served by, and was located upon the line of said Louisville and Nashville Railroad Company, to wit, "Merna mine," at Merna, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that, on said August 11, 1922, pursuant to said order given by said Mary Helen Coal Corporation, said Louisville and Nashville Railroad Company placed at, furnished with, and assigned to said mine a certain railroad car, suitable for the loading and transportation of coal, to wit, the car bearing the initials "L. & N." and the number "80720"; and that, on said August 11, 1922, at said Merna mine said Mary Helen Coal Corporation loaded 90,000 pounds of bituminous 4-inch run-of-mine coal, that being a carload, into and upon said car.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on September 4, 1922, at Four Mile Lake aforesaid, in said southern division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in the first count of this indictment, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of said coal and property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 22 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement.

knowingly directed said Bowley Hunt Coal Company and said The Central Coal Company to tender all of such coal for transportation, to said and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," and, pursuant to said instructions, said Bowley Hunt Coal Company, said The Central Coal Company and said Mary Helen Coal Corporation, instructed said Tannville and Nashville Railroad Company to afford transport and cartage of coal in said car to the Municipal Light and Power Company, at said Four Mile Lake, Michigan Central Railroad delivery, and, thereupon, by reason of said instructions, said cartage of coal was so effected by said Tannville and Nashville Railroad Company, and was transported in said car, to said Tannville and Nashville Railroad Company, in Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers in railroad, said section, from said Meridian to said Four Mile Lake, over their respective connecting railway routes, and, on September 1, 1902, pursuant to said instructions and billing and as further instruction, given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said car 117 load of coal be delivered by said Michigan Portland Cement Company, upon said private siding, and cartage of coal was delivered in said car, to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake, instead of to the electric plant and power station as aforesaid, operated by the municipality of Cleveland, Ohio, said Four Mile Lake, which said delivery of said cartage of coal said Michigan Portland Cement Company thereon and thereupon and which said cartage of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

To said the grand jury aforesaid upon their oath sworn, and further present that at the several times of forwarding by said Michigan Portland Cement Company of said shipping instructions to said Bowley Hunt Coal Company and said The Central Coal Company, of its acceptance of delivery of said cartage of coal and of forwarding of said cartage of coal for transportation of said cartage, said Portland Cement Company, then and there, said common carrier of Cleveland, Ohio, in common and subject to a bill of lading and not authorized or requested, said Michigan Portland Cement Company to proceed or provide any said transportation.

And as the grand jury aforesaid upon their oath sworn, present that said Michigan Portland Cement Company and its said and then, common and form, and by the several and various aforesaid, unlawfully and knowingly accept and receive a transportation respect to the transportation of property by said common carriers by common carriers subject to the act of said common carriers

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Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from 50 mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," and pursuant to said instructions, said Bewley-Darst Coal Company, said The Central Fuel Company and said Mary Helen Coal Corporation instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car to the Municipal Light and Power Company, at said Four Mile Lake, Michigan Central Railroad delivery, and thereupon, by reason of said instructions, said carload of coal was so billed by said Louisville and Nashville 51 Railroad Company, and was transported, in said car, by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Merna mine, to said Four Mile Lake, over their respective connecting railway routes, and on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake instead of to the electric light and power plant owned and operated

by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not
52 authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

4. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Twelfth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, during the period of time in which said service order No. 23 was in force and effect, as alleged in the first count of this indictment, all of the allegations made in paragraphs 1 and 2 of said first count being hereby incorporated in this
53 count by reference as fully as if they were here repeated, and during said period of time from August 7, 1922, to September 20, 1922, both inclusive, to wit, on August 11, 1922, the Mary Helen Coal Corporation requested said Louisville and Nashville Railroad Company to place, furnish, and assign 34 cars suitable for the loading and transportation of coal to a certain mine in the State of Kentucky, which was served by, and was located upon the line of said Louisville and Nashville Railroad Company, to wit, "Merna

mine," at Merna, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that, on said August 11, 1922, pursuant to said order given by said Mary Helen Coal Corporation, said Louisville and Nashville Railroad Company placed at, furnished with, and assigned to said mine a certain railroad car, suitable for the loading and transportation of coal, to wit, the car bearing the initials "L. & N." and the number "82307"; and that, on said August 11, 1922, at said Merna mine said Mary Helen Coal Corporation loaded 101,700 pounds of bituminous 4-inch run-of-mine coal, that being a carload, into and upon said car.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that on August 31, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in the first count of this indictment, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of said coal and property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from The Central Fuel Company, a duly organized corporation having an office in Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," and, pursuant to said instructions, said Bewley-Darst Coal Company, said

The Central Fuel Company, and said Mary Helen Coal Corporation instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car to the Municipal Light and Power Company at said Four Mile Lake, Michigan Central Railroad delivery, and thereupon, by reason of said instructions, said carload of coal was so billed by said Louisville and Nashville Railroad Company, and was transported in said car by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Merna mine, to said Four Mile Lake, over their respective connecting railway routes, and on August 31, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

36 3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

4. And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was

57 not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Thirteenth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, during the period of time in which said service order No. 23 was in force and effect, as alleged in the first count of this indictment, all of the allegations made in paragraphs 1 and 2 of said first count being hereby incorporated in this count by reference as fully as if they were here repeated, and during said period of time from August 7, 1922, to September 20, 1922, both inclusive, to wit, on August 11, 1922, the Mary Helen Coal Corporation requested said Louisville and Nashville Railroad Company to place, furnish, and assign 34 cars suitable for the loading and transportation of coal to a certain mine in the State of Kentucky, which was served by and was located upon the line of said Louisville and Nashville Railroad Company, to wit, "Merna mine," at Merna, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that, on said August 11, 1922, pursuant to said order given by said Mary Helen Coal Corporation, said Louisville and Nashville Railroad Company placed at, furnished with,
58 and assigned to said mine a certain railroad car, suitable for the loading and transportation of coal, to wit, the car bearing the initials "L. & N." and the number "83039"; and that, on said August 11, 1922, at said Merna mine said Mary Helen Coal Corporation loaded 104,800 pounds of bituminous 4-inch run-of-mine coal, that being a carload, into and upon said car.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on September 2, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in the first count of this indictment, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of said coal and property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, the Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and

a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes

3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company, with the assistance of the Bewley-Darst Coal Company, purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from The Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said Bewley-Darst Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the "Municipal Light and Power Company, Four Mile Lake, Michigan Central Railroad delivery," and, pursuant to said instructions, said Bewley-Darst Coal Company, said The Central Fuel Company and said Mary Helen Coal Corporation instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car to the Municipal Light and Power Company, at said Four Mile Lake, Michigan Central Railroad delivery,

and thereupon, by reason of said instructions, said carload of coal was so billed by said Louisville and Nashville Railroad Company, and was transported, in said car, by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, said Cincinnati Northern Railroad Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Merna mine, to said Four Mile Lake, over their respective connecting railway routes, and on September 2, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said Bewley-Darst Coal Company and said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said

- 61 Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

4. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

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Fourteenth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, during the period of time in which said service order No. 23 was in force and effect, as alleged in the first count of this indictment, all of the allegations made in paragraphs 1 and 2 of said first count being hereby incorporated in this count by reference as fully as if they were here repeated, and during said period of time from August 7, 1922, to September 20, 1922, both inclusive, to wit, on August 25, 1922, The Sloat-Darragh Coal Company requested said Louisville and Nashville Railroad Company to place, furnish and assign 10 cars suitable for the loading and transportation of coal to a certain mine in the State of Kentucky, which was served by, and was located upon the line of said Louisville and Nashville Railroad Company, to wit, "Storm King mine," at Storm King, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that, on said August 25, 1922, pursuant to said order given by said The Sloat-Darragh Coal Company, said Louisville and Nashville Railroad Company placed at, furnished with, and assigned to said mine a certain railroad car, suitable for

the loading and transportation of coal, to wit, the car bearing the initials "L. & N." and the number "70674"; and that on said August 25, 1922, at said Storm King mine said The Sloat-Darragh Coal Company loaded 81,100 pounds of bituminous run-of-mine coal, that being a carload, into and upon said car.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that, on September 5, 1922, at Four Mile Lake
63 aforesaid, in said Southern Division of said Eastern District of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in the first count of this indictment, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of said coal and property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from the Central Fuel Company, a duly organized corporation having an office at Cincinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars, suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manu-

64 facturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said The Sloat-Darragh Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the City Electric Light and Power Company, at Chelsea, Michigan, for delivery by said The Michigan Central Railroad Company at said Four Mile Lake, and pursuant to said instructions, said The Central Fuel Company and said The Sloat-Darragh Coal Company instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car to the City Electric Light and Power Company, at Chelsea, Michigan, for delivery at said Four Mile Lake, by said The Michigan Central Railroad Company, and thereupon,

by reason of said instructions, said carload of coal was so billed by said Louisville and Nashville Railroad Company, and was transported, in said car, by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Storm King mine to said Four Mile Lake, over their respective connecting railway routes, and on September 5, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan

65 Portland Cement Company upon said private siding, said carload of coal was delivered in said car to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well knew, said municipality of Chelsea did not need or require said carload of coal and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

4. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers subject to the act to regulate commerce and
66 the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fifteenth count

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, during the period of time in which said service order No. 23 was in force and effect, as alleged in the first count of this indictment, all of the allegations made in paragraphs 1 and 2 of said first count being hereby incorporated in this count by reference as fully as if they were here repeated, and during said period of time from August 7, 1922, to September 20, 1922, both inclusive, to wit, on August 25, 1922, the Sloat-Darragh Coal Company requested said Louisville and Nashville Railroad Company to place, furnish, and assign 10 cars suitable for the loading and transportation of coal to a certain mine in the State of Kentucky, which

67 was served by and was located upon the line of said Louisville and Nashville Railroad Company, to wit, "Storm King mine," at Storm King, in the State of Kentucky, for the loading and transportation of coal for class 2 purposes; that, on said August 25, 1922, pursuant to said order given by said The Sloat-Darragh Coal Company, said Louisville and Nashville Railroad Company placed at, furnished with, and assigned to said mine a certain railroad car, suitable for the loading and transportation of coal, to wit, the car bearing the initials "L. & N." and the number "77395"; and that on said August 25, 1922, at said Storm King mine said The Sloat-Darragh Coal Company loaded 98,000 pounds of bituminous run-of-mine coal, that being a carload, into and upon said car.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present that, on September 5, 1922, at Four Mile Lake aforesaid, in said Southern Division of said Eastern Division of Michigan, said Michigan Portland Cement Company, then and there well knowing the premises set forth in the first count of this indictment, unlawfully did knowingly accept and receive a certain concession in respect to the transportation of said coal and property in interstate commerce by certain common carriers by railroad in said section of the United States lying east of the Mississippi River, subject to the act to regulate commerce and the acts amendatory thereof and supplementary thereto, to wit, from said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis

68 Railway Company, and said The Michigan Central Railroad Company, whereby an advantage was given to said Michigan Portland Cement Company and a discrimination was practiced in its favor and against all other shippers in its class desirous of shipping coal embraced in classes 3 and 5 of said service order No. 23 from mines located upon the lines of and served by said Louisville and Nashville Railroad Company; that is to say:

On August 23, 1922, said Michigan Portland Cement Company purchased a large quantity of coal, including the coal which was loaded in and upon said last-mentioned car, from the Central Fuel Company, a duly organized corporation having an office at Cin-

cinnati, in the State of Ohio, and, on August 23, 1922, then intending by a device to procure class 2 preference and priority in the placement and assignment of cars suitable, as aforesaid, for the loading and transportation of coal to be used for the purpose of manufacturing Portland cement, and intending to procure the transportation of the carload of coal in this count mentioned, in interstate commerce, from Kentucky into said Southern Division of said Eastern District of Michigan, for the use of said Michigan Portland Cement Company in the manufacture of Portland cement, knowingly directed said The Sloat-Darragh Coal Company and said The Central Fuel Company to tender all of such coal for transportation, billed and consigned to the City Electric Light and Power Company, at Chelsea, Michigan, for delivery by said The Michigan Central

69 Railroad Company at said Four Mile Lake, and pursuant to said instructions, said The Central Fuel Company and said The Sloat-Darragh Coal Company instructed said Louisville and Nashville Railroad Company to bill and transport said carload of coal in said car to the City Electric Light and Power Company, at Chelsea, Michigan, for delivery at said Four Mile Lake, by said The Michigan Central Railroad Company, and thereupon, by reason of said instructions, said carload of coal was so billed by said Louisville and Nashville Railroad Company, and was transported, in said car, by said Louisville and Nashville Railroad Company, the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, and said The Michigan Central Railroad Company, common carriers by railroad in said section, from said Storm King mine, to said Four Mile Lake, over their respective connecting railway routes, and on September 5, 1922, pursuant to said instructions and billing and a further instruction given by said Michigan Portland Cement Company to said The Michigan Central Railroad Company that said carload of coal be delivered to said Michigan Portland Cement Company upon said private siding, said carload of coal was delivered in said car, to said Michigan Portland Cement Company, on said private siding, at said Four Mile Lake instead of to the electric light and power plant owned and operated by the municipality of Chelsea, near said Four Mile Lake; which said delivery of said carload of coal said Michigan Portland Cement Company then and there accepted; and which said carload of coal said Michigan Portland Cement Company thereupon used for the purpose of manufacturing Portland cement.

70 3. And the grand jurors aforesaid, upon their oath aforesaid, do further present that at the several times of the giving by said Michigan Portland Cement Company of said shipping instructions to said The Central Fuel Company, of its acceptance of delivery of said carload of coal, and of its using of said carload of coal for the purpose of manufacturing Portland cement, as in this count aforesaid, as said Michigan Portland Cement Company then well

knew, said municipality of Chelsea did not need or require said carload of coal, and had not authorized or requested said Michigan Portland Cement Company to procure or provide any coal for it whatsoever.

4. And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said Michigan Portland Cement Company, at the time and place, in manner and form, and by the device and means, aforesaid, unlawfully did knowingly accept and receive a concession in respect to the transportation of property in interstate commerce by common carriers, subject to the act to regulate commerce, and the acts amendatory thereof and supplementary thereto, obtained by deception practiced by it upon said carriers, whereby an advantage was given, by those carriers, to said Michigan Portland Cement Company, which, by force of said service order No. 23, was not then, as

71 said Michigan Portland Cement Company then and there well knew, due or open to said Michigan Portland Cement Company, and which said common carriers, but for said deceptive billing, device, and deception, would not have granted to it, and whereby a discrimination was practiced in its favor and against others; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

EARL J. DAVIS,
United States Attorney.

JOHN A. BAXTER,
*Assistant United States Attorney,
Eastern District of Michigan.*

A true bill:

CONRAD J. NETTING,
Foreman of Grand Jury.

[File indorsement omitted.]

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In United States District Court

Plea of not guilty

February 18, 1924

[Title omitted.]

The defendant Michigan Portland Cement Company, by its president, Nathan S. Potter, jr., being present in court and being arraigned on the indictment heretofore filed against it, waives the reading thereof and stands mute, and thereupon a plea of not guilty is entered herein as to said defendant under direction of the court.

In United States District Court

Order granting leave to file demurrer

February 18, 1924

[Title omitted.]

In this cause, upon the application of attorney for defendant, for cause shown, it is by the court now here ordered that leave be, and the same is, hereby granted to file demurrer by March 17th, A. D. 1924.

In United States District Court

[Title omitted.]

Demurrer

Filed March 4, 1924

Now comes the Michigan Portland Cement Company, by Beaumont, Smith and Harris, its attorneys, and having heard the said indictment read, says that it and the matters and things therein contained in manner and form as the same are stated and set forth are not sufficient in law in the following respects:

(1) Said matters and things as charged in said indictment do not constitute a concession, discrimination or other advantage accepted, received, practices or given in violation of the Elkins Act, for the reasons that it does not appear in said indictment that any common carrier subject to the interstate commerce act granted or gave such concession, discrimination or advantage.

(2) The acts charged do not constitute the receipt on the part of the defendant of a concession or advantage given or discrimination practiced in respect to the transportation of any property in interstate commerce by any common carrier in that said carriers were not required by Interstate Commerce Commission Order No. 23 to transport coal according to any prescribed classes of purposes and order of classes.

(3) Service order No. 23, particularly paragraph 7 thereof, makes no rules, regulations or practices applicable to the transportation of coal for different classes of purposes and different order of classes, said order being applicable only to car service, which does not denote or connote transportation.

(4) The defendant was, during all the times in said indictment alleged, entitled to have furnished it safe and adequate car service and to make request for and to receive transportation of its property in interstate commerce without regard to the restrictions attempted to be imposed by service order No. 23, especially paragraph 7 thereof, for the reason that said service order was beyond the power of the Interstate Commerce Commission to make and promulgate, in so far as said defendant was concerned, in the following respects, to wit:

(a) Service order No. 23, particularly paragraph 7 thereof, is the attempted exercise of purely legislative powers which are vested in the Congress of the United States by article 1, sections 1 and 8 of the Constitution of the United States and are not subject to delegation.

75 (b) Said service order No. 23, particularly paragraph 7 thereof, exceeds the authority conferred upon the Interstate Commerce Commission in the interstate commerce act, as amended.

(c) The commission was not authorized or empowered by said interstate commerce act to make and enforce, without notice or hearing, the rules, regulations, and practices relating to car. service attempted to be made and enforced in service order No. 23 as binding upon and applicable to a shipper or consignee.

(d) The commission was not authorized or empowered by said interstate commerce act to make and enforce, without notice or hearing, the rules, regulations, and practices relating to transportation attempted to be made and enforced in and by said service order No. 23, particularly paragraph 7 thereof, as binding upon and applicable to a shipper or consignee.

(e) Service order No. 23, particularly paragraph 7 thereof, in so far as it attempts to control the loading, transportation, supply, and use of coal, the diversion and the reconsignment thereof, is invalid as in excess of the constitutional grant of power to Congress to regulate commerce among the several States, and is in excess of any authority conferred by Congress upon the Interstate Commerce Commission.

(f) Service order No. 23, particularly paragraph 7 thereof, violates the fifth amendment of the Constitution of the United States, in that by the priorities therein attempted to be created persons engaged in and depending upon industries and industrial operations wherein coal is required, which are placed in subsequent priority classification, are deprived of liberty and property without due process of law, and in that the priority in favor of all users of coal who may be supplied from Lake Superior in respect to all uses and purposes constitutes such discrimination as amounts to a deprivation of liberty and property without due process of law in respect to other users of coal.

(g) Service order No. 23, particularly paragraph 7 thereof, is invalid as in violation of section 9, Article I of the Constitution of the United States, in that it gives a preference to the Lake Erie ports of Ohio and Pennsylvania and the Lake Superior ports of Michigan, Wisconsin, and Minnesota over those of the other States.

(h) There had not been, as appears in said indictment, any consignment of the coal in question to any class 2 purpose as defined in service order No. 23, and there was hence no diversion to or reconsignment for any other purpose.

(i) The acts charged do not constitute any offense under the interstate commerce act or the Elkins Act, in that the said acts charged are not prohibited nor made punishable in any way.

(5) Congress is without constitutional power to affect the use, loading and transportation, and distribution of coal, and to exercise a local police power under the guise of regulating commerce.

And that the said Michigan Portland Cement Company is now bound by the law of the land to answer the same, and this it is ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said Michigan Portland Cement Company prays judgment, and that by the court it may be dismissed and discharged from the said premises in the said indictment specified.

This demurrer upon each and every ground above set forth is made applicable to each and every count of the indictment.

BEAUMONT, SMITH & HARRIS,
Attorneys for Defendant.

[File indorsement omitted.]

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In United States District Court

[Title omitted.]

Memorandum opinion

Filed September 22, 1924

TUTTLE, District Judge.

The demurrer to the indictment in this cause involves, in all substantial respects, the same facts and questions as are involved in the case of United States vs. The P. Koenig Coal Company, Number 8875, decided by written opinion of this court filed this day. The opinion, therefore, in that case controls and determines the decision here and for the reasons there pointed out the demurrer to the indictment herein must be sustained and an order to that effect will be entered.

ARTHUR J. TUTTLE,
District Judge.

Detroit, Mich., September 22nd, 1924.

[File indorsement omitted.]

77

In United States District Court

Order sustaining demurrer

September 22, 1924

[Title omitted.]

In this cause demurrer to the indictment herein having been heretofore duly argued and submitted, and the court having taken time for mature deliberation thereon, does now here order that said demurrer be, and the same is, hereby sustained, in accordance with the terms of the written opinion this day filed herein.

In United States District Court

[Title omitted.]

Assignment of errors

Filed October 18, 1924

United States of America, plaintiff, by its counsel, now comes and, in connection with its petition for writ of error, files the following assignment of errors on which it will rely on its writ of error to the Supreme Court of the United States from the final judgment of the district court entered September 22, 1924.

The district court erred:

1. In sustaining the demurrer.
2. In not overruling the demurrer.
3. In not sustaining the indictment.
4. In holding and adjudging that the acts alleged in the indictment do not constitute the offense charged.
5. In holding and adjudging that the acts alleged in the indictment on which the defendant is charged with having knowingly accepted or received certain illegal concessions or discriminations in respect to the transportation of property in interstate commerce do not constitute a violation of section 1 of the Elkins Act (C. 708, 32 Stat. 847) as amended by section 2 of the Hepburn Act (C. 3591, 34 Stat. 587).

6. In not holding and adjudging that the acts alleged in the indictment constitute on the part of the defendant the acceptance or receipt by the defendant of certain illegal concessions or discriminations within the meaning of section 1 of the Elkins Act (C. 706, 32 Stat. 847) as amended by section 2 of the Hepburn Act (C. 3591, 34 Stat. 587).

- 79 7. In deciding and holding as follows:

The demurrer to the indictment in this cause involves, in all substantial respects, the same facts and questions as are involved in the case of United States vs. The P. Koenig Coal Company, Number 8875, decided by written opinion of this court filed this day. The opinion therefore, in that case controls and determines the decision here and for the reasons there pointed out the demurrer to the indictment herein must be sustained and an order to that effect will be entered.

8. In deciding and holding as follows:

Now, nothing could be clearer than that, under the express allegations of the indictment involved, the advantage obtained is explicitly declared to have been received by the defendant from the carriers, not as a benefit yielded or consciously granted by them, but solely through and by means of deception practiced upon them by the defendant. The Government charges in substance that the carriers were tricked by the defendant into transporting this coal, which they would not have done "but for said device and deception."

To say, under these alleged circumstances, that the carriers thus imposed on by the defendant and fraudulently induced to transport this freight were thereby actually granting (although unknowingly) to the defendant a "concession" or that the defendant was thereby receiving from such carriers a "concession," is, in my opinion to do violence to the plain meaning of language and to fail to call things by their proper names.

9. In deciding and holding as follows:

If an advantage obtained by such artifice and fraud be a concession, accepted or received by the deceiver from his victim (and, therefore, necessarily granted or given, even although unknowingly, by the deceived), then the hobo who steals a ride on the "bumpers" of a railroad car thereby receives and accepts a concession given him by such railroad, and the thief who picks the pocket of a conductor on a train knowingly accepts and receives a concession "given" him though not knowingly. I can perceive no real difference nor distinction in the underlying principles involved in the instances just suggested. In essence they seem to me to be the same. Although I am aware that in the only reported decision, so far as I can learn, involving this precise question (that of the district judge in *United States vs. Metropolitan Lumber Co.*, 254 Fed. 335), a contrary opinion was reached, I am unable, after careful study of that decision, to approve or accept the conclusions there expressed. I can not avoid the conviction that they embody, and are based upon, the reasoning to which I have already referred and with which I can not agree.

10. In deciding and holding as follows:

Nor is it without significance, as bearing upon the meaning of this statute, that an entirely different statute (section 10 of the act of Feb. 4, 1887, ch. 104, 24 Stat. 382 as amended) expressly forbids the obtaining of various kinds of rebates by means of false statements, "whether with or without the consent or connivance of the carrier," being apparently intended by Congress to relate to an evil not also covered by any other statutory provision.

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11. In deciding and holding as follows:

In view of the considerations mentioned, and bearing in mind that the penal statute involved should be construed strictly and limited to the plain meaning of the language used, I reach the conclusion that it can not properly be so extended as to include within its prohibitions the conduct charged against the defendant by the indictment at bar.

12. In deciding and holding as follows:

For the reasons stated, the demurrer must be sustained on the first ground therein presented, namely, that the acts alleged in the indictment do not constitute the offense charged. There is, therefore, no occasion to consider the objections urged to the validity of the service order involved. An order will be entered sustaining the demurrer.

13. In entering the order sustaining the demurrer.

Wherefore, the United States of America prays that the final judgment of the district court entered September 22, 1924, sustaining the demurrer be reversed, annulled, and set aside, and for such other and further order as may be appropriate.

DELOS G. SMITH,

United States Attorney.

BLACKBURN ESTERLINE,

Assistant to the Solicitor General.

[File indorsement omitted.]

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In United States District Court

[Title omitted.]

Petition for writ of error

Filed October 13, 1924

United States of America, plaintiff, by its counsel, now comes and says that on or about September 22, 1924, this court filed its opinion and entered its judgment in favor of the defendant against the plaintiff, in which judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear from the assignment of errors now on file.

Wherefore, United States of America prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of error so complained of, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States, in accordance with the provisions of the act of Congress approved March 2, 1907 (34 Stat. 1246).

DELOS G. SMITH,

United States Attorney.

BLACKBURN ESTERLINE,

Assistant to the Solicitor General

Allowed:

CHARLES C. SIMONS,

United States District Judge.

[File indorsement omitted.]

In United States District Court

[Title omitted.]

Order allowing writ of error

Filed October 18, 1924

United States of America, plaintiff, having made and filed its petition praying a writ of error to the Supreme Court of the United States from the final judgment of the district court entered September 22, 1924, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and adjudged that the writ of error be and the same is hereby allowed as prayed and made returnable within thirty (30) days from the date hereof and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings and papers on which said final judgment was made and entered to the Supreme Court of the United States.

CHARLES C. SIMONS,
United States District Judge.

[File indorsement omitted.]

In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed November 17, 1924

To the Clerk of the District Court:

Please transmit as the transcript of the record in the above entitled cause, the following pleadings, documents and records to the Supreme Court of the United States:

1. Indictment.
2. Arraignment and plea.
3. Order granting leave to file demurrer.
4. Demurrer.
5. Opinion of the court.
6. Order on opinion sustaining demurrer.
7. Petition for writ of error.
8. Assignments of error.
9. Order allowing writ of error.

DELOS G. SMITH,
United States Attorney.

I hereby acknowledge service upon me of the above præcipe. Objection is made and exception noted as to return of indictment in its

entirety. One count and stipulation that all others are similar is sufficient.

HAL H. SMITH,
THOMAS B. MOORE,
Attorneys for Appellee.

Dated this 17th day of November, A. D. 1924.
[File indorsement omitted.]

84 In United States District Court

[Title omitted.]

Writ of error

Filed October 18, 1924

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the District Court of the United States for the Eastern District of Michigan, Southern Division, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America, plaintiff, and Michigan Portland Cement Company, a corporation, defendant, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected,

85 the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 18th day of October, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.]

ELMER W. VOORHEIS,
Clerk of the District Court of the United States.

[File indorsement omitted.]

86 [Citation in usual form showing service on Smith & Harris et al. omitted in printing.]

[Title omitted.]

Clerk's certificate

I, Elmer W. Voorheis, clerk of the District Court of United States for the Eastern District of Michigan, do hereby certify and return to writ of error, sued out by the United States of America in the above entitled cause; that it is a true copy of the records and proceedings designated to be included in my said return, as the same appears of record and on file in my office; that I have compared the foregoing record with the originals, and that it is a true and correct transcript therefrom, and of the whole of such designated records and proceedings in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this twenty-sixth day of November, in the year of our Lord, one thousand nine hundred and twenty-four, and of the Independence of the United States of America, the one hundred and forty-ninth.

[SEAL.]

ELMER W. VOORHEIS,
*Clerk, United States District Court,
Eastern District of Michigan.*

[Indorsed on wrapper:] File No. 30,722. E. Michigan D. C. U. S. Term No. 757. The United States of America, plaintiff in error, vs. Michigan Portland Cement Company. Filed December 3, 1924. File No. 30,722.

